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ABSTRACT

Restraints imposed on medical advertising through the broadcast media reflect a worldwide concern for public protection in a sensitive area, where problems of ignorance and misrepresentation are enlarged by false hope. The author examines the broadcast codes of seventeen free-world nations, with respect to their provisions on medical advertising. Areas covered are the nature of the agencies concerned with medical advertising; the concept of truth; testimonial restrictions; unacceptable terminology; appeals to fear; matters of taste; and prohibited advertising. He concludes that the codes have been designed to avoid promotion of medical products and services that are detrimental to public, or that could keep the public from seeking medical assistance, by conveying false impressions of cure or adequate treatment. (Author/RN)

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BROADCAST ADVERTISING OF MEDICAL PRODUCTS AND SERVICES: ITS REGULATION BY OTHER NATIONS

Jon T. Powell*

Few issues stir more controversy among broadcasters than federal regulation of advertising. The constitutional protection of the First Amendment and basic concepts of the free enterprise system have left United States broadcasters relatively free of formal external restraints over broadcast commercials. General as well as specific guidelines on the subject, which have been outlined in the National Association of Broadcasters' Code,[1] continue to remain practical matters of self-regulation. Any suggestion of federal regulation of broadcast advertising, beyond that involving fraud and clear public danger, is met as a threat to a basic freedom.

However, other free world nations who share the same concern for protecting freedom of expression, have imposed specific conditions on broadcast advertising, particularly in the area of medical products and services. This article will examine these regulations in order to provide a clear understanding of the nature and scope of government control in this area.

The seventeen nations[2] which are the subject of this study reflect great differences in culture, size and location. Such a broad representation has several advantages. While any wide descrepancy in regulation due to cultural differences becomes more apparent, so does any similarity of regulatory principle. A wide sample of nations also offers

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[1] NAB Code Authority, *Broadcast Self Regulation: Working Manual of the National Association of Broadcasters* (1971).

[2] Australia, Barbados, Canada, Cyprus, Finland, Great Britain, Hong Kong, Ireland, Kenya, Kuwait, Malaysia, Malta, New Zealand, Northern Nigeria, Singapore, Southern Yemen, and Trinidad and Tobago.

greater opportunity for examining in detail the specificity of these regulations. In few other areas does one find such specific controls as those governing the broadcast advertising of medical products and services.

There are a number of similarities to be found among the countries included in this study. One is the role of the government in the regulation of broadcasting. Although the broadcast systems operate as autonomous or semi-autonomous services, the regulations governing medical advertising generally represent official acts. Thus, this study does not examine matters of self-regulation, but official regulations, carrying the weight of external enforcement.

Another similarity is the common respect for freedom of expression, which is nonetheless subject to the careful exercise of restraint in medical advertising. The broadcaster is required to follow official regulations as a matter of public responsibility to protect the audience from exploitation in this particularly sensitive area.

In an attempt to achieve some perspective for a very broad topic, this study will center each discussion around an examination of British regulations. The areas to be covered are the nature of the regulatory agencies concerned with medical advertising; the concept of truth; testimonial restrictions; unacceptable terminology; appeals to fear; taste; and prohibited advertising.

The Regulatory Agencies

Enforcement of advertising codes by the nations in this study is carried on by governmental agencies. Regulations governing medical advertising are interpreted, enforced (and often initiated) by these agencies. A brief look at some of these governing bodies will indicate the nature of official commitment to such regulation.

With the passage of the *1954 Television Act*, the British Parliament established a commercial television system whose income was to be provided only by advertising, and subject to careful regulation. The Television Act created the Independent Television Authority (ITA), whose Chairman,

Deputy Chairman and nine members are appointed by the Minister of Posts and Telecommunications. This Authority, responsible for regulating commercial Independent Television (ITV), exercises control over medical advertising through an Advertising Advisory Committee and a Medical Advisory Panel, whose members it appoints.

The Advertising Advisory Committee has eleven members under a chairman who "should be independent of any financial or business interest in advertising."[3] Of the present eleven members, one is a former Chairman of the Federation of Women's Institutes; one is the Secretary of a large consumer group; one is a journalist with a special interest in consumer affairs; and four members come from organizations concerned with advertising standards—the Advertising Association, the Institute of Practitioners in Advertising, the Incorporated Society of British Advertisers, and a committee of press, periodical and advertising interests interested in voluntary control of medical advertising in all media. The remaining four members deal principally with medical advertising. They come from the Ministry of Health, the British Medical Association, the British Dental Association, and the Pharmaceutical Society. All are appointed as individuals and do not act as representatives of the bodies who nominated them, but represent both the public and organizations dealing with advertising standards, including medical and surgical advertising. Their duty, under Section 9(2) of the *1954 Television Act*, is to give advice to the Independent Television Authority (ITA), which governs commercial television.

The Medical Advisory Panel includes seven ITA appointees, four general members representing the fields of medical, pharmacology, chemistry, dentistry and veterinary science; and four "second opinion" consultants in pediatrics, gynecology, dermatology, and ear nose, and throat. This panel provides the ITA with advice on advertising of

[3] Independent Television Authority, "Advertising Control," *ITV 1971: Guide to Independent Television* 116 (January, 1971).

medicines, medical and surgical treatments, medical appliances, toilet products claiming therapeutic or prophylactic effects, medicines and medical or surgical treatments for veterinary purposes, as well as any other advertising. Since 1964, the Medical Advisory Panel has, in effect, been "licensing" the purposes for which acceptable medicines could be offered with reasonable safety on television according to the members' expert opinions as well as general medical opinion.[4]

Lord Aylestone, Chairman of the Independent Television Authority, describes the duties of ITA with regard to the general regulation of advertising as:

> First: to exclude from television any advertisement that would be likely to mislead;
>
> Second: to draw up a code of advertising standards and practice, setting out the rules of behavior and laying down the methods of advertising that will not be acceptable; and
>
> Third: to secure compliance with the code.[5]

He goes on to emphasize that the Medical Advisory Panel must clear all medical advertising. "Every medical advertisement, and even advertisements for such things as dandruff shampoos and fluoride toothpastes, has to be cleared with this Panel."[6]

This description of the procedures for evaluating the acceptability of medical advertising tells only part of the story: the activity they generate indicates more clearly the nature of their application. Sir John Richardson, a member of the ITA Medical Advisory Panel, offers this description:

> Naturally enough, the advertisements for proprietary medicines come under the closest scrutiny

[4] *Id.* Such a practice is further supported by the Medicines Act of 1968, which requires a product to be licensed before it is marketed to assure its efficacy and quality.

[5] Lord Aylestone, "Television through Advertising," *ITA Notes 18* 4 (April, 1970).

[6] *Id.*

of all. Amongst the 6,700 original scripts, 670 (10%) were for advertisements that called for consultation with the medical advisory panel . . . .

The controls rule out hormone treatments, pile ointments, contact lenses, copper bracelets, and anything called a "tonic". Even so, of the 205 scripts for the 21 proprietary medicines that were acceptable in principle, the advertisers were asked to change one script in every four. This removed claims that seemed to have been pushed too far; stopped references to symptons for which the drugs were not indicated; and got rid of ambiguities that might have been materially misleading. Occasionally, where there are special difficulties, an ITA consultant might meet a manufacturer's own medical experts to straighten out any important point at issue. Normally, however, the discussions with advertisers and their agencies are a matter for the staff of the ITCA [Independent Television Companies Association] and neither they nor the staff of the Authority will approve anything in an advertisement to which the Medical Advisory Panel takes exception.

Having received official approval of their scripts, the advertisers produce their filmed commercials. All of these are seen on closed-circuit television by the control department of the Authority and the programme companies to make sure they are in line with the approved scripts and to check that nothing unforeseen has come into the advertisement during production. The film-makers, while sticking to the script, may have produced a medical commercial that is over-dramatic—too "doom laden" in its tone, style or background music; or, by mere emphasis on a word, or hesitation between two phrases, a new, unexpected and unacceptable impression may have been created. About 2% of

> the films need minor editing by the advertisers before they are finally accepted for broadcasting.[7]

Although most nations in this survey have not established as elaborate a system as Great Britain has, all do have specific conditions to assure some official review of medical commercials before airing. Such review is usually outlined in the national broadcast laws.

Australia, which allows commercial radio and television broadcasting as well as supporting a public service in both areas, has specific procedural regulations to control medical advertising in its *Broadcasting and Television Act.* Section 100 of this Act provides as follows:

> (6.) A licensee shall not broadcast or televise an advertisement relating to a medicine unless the text of the proposed advertisement has been approved by the Director-General of Health, or, on appeal to the Minister under this section, the Minister.
>
> (7.) The Director-General of Health may delegate to a medical officer of a State his power under this section to approve the text of an advertisement.
>
> (8.) Any such delegation is revocable in writing at will and does not prevent the exercise of a power of the Director-General of Health.
>
> (9.) A person may appeal to the Minister from any decision of the Director-General of Health or of a delegate of the Director-General of Health under this section.[8]

The Australian Broadcasting Control Board (ABCB), which oversees all commercial and non-commercial radio and television services, assures government supervision of medical advertising, since advertising is subject to standards published by the ABCB.

[7] Sir John Richardson, "Medical Advertising Control," *ITA Notes 15* 3-4 (August 1969).

[8] Commonwealth of Australia, *Broadcasting and Television Act of 1942-1965* at 54.

However, though these guidelines may be specific, they do not limit the interpretative powers of the Director-General of Health, whose prior approval of medical advertising is necessary:

> Notes for those who prepare medical advertisements have been prepared by the Director-General of Health and are incorporated in the Book of Television Programme Standards issued by the Australian Broadcasting Control Board.
>
> It is essential for the acceptance of any medical commercial for television that the television station be provided with a statement indicating that the approval of the Director-General of Health has been obtained and the date of approval.[9]

In a similar but more specific manner, the Hong Kong Television Authority, a governmental agency, issues a code which rules that advertising for certain medical products requires the prior approval of the Director of Medical and Health Services.[10] In Canada, both private and state broadcast systems are regulated by the same governmental agency—the Canadian Radio-Television Commission (CRTC). Medical advertising must have prior approval of the Department of Health and Welfare.[11] The Cyprus Broad-

[9] Federation of Australian Commercial Stations, "Medical Advertising," *Television Advertising Board Advertising Regulations* at 9-10.

[10] *See* Hong Kong Television Authority, *Television Advertising Standards Code of Practice 2.* Categories of products whose advertisement requires such prior approval include mixtures, powders, tablets, lozenges or any product to be taken by mouth for therapeutic use; drops or paints, such as eye, ear or nose drops or throat paints; ointments, creams, pastes or powders for external therapeutic use; liniments or any product to be rubbed on; injections; tooth pastes or any type of dentifrice claiming cure of decay or mouth conditions; and hair restorers. Some categories of products do not require prior approval: beauty creams; baby powders, deodorants; and foods which claim only to provide a balanced diet or to give calorific value.

[11] "No articles to which the Proprietory or Patent Medicine Act of the Food and Drug Act applies, and no recommendation for the prevention or treatment of illness, may be advertised without the prior approval of the Department of Health and Welfare." Canadian Broadcasting Corporation, *General Advertising Policy on Medicinal Products* 1 (January, 1970).

casting Corporation, which has charge of both radio and television in that nation, exercises stricter control over medical commercials than other forms, specifically reserving "the right to amend, supplement or delete" any of the conditions governing the acceptability of such advertising. Periodic review is also noted as part of the supervisory procedure.[12]

The Radio Eireann Authority of Ireland exercises strict control of medical advertising under statutory authority provided by the *Broadcasting Authority Act, 1960.*[13] In contrast, in Kenya the entity describing itself as a "Public Service Broadcasting Organization" accepts commercial advertising, but simply notes that "there are no written regulations governing commercial advertising."[14] Similarly, while the State of Kuwait Ministry of Guidance and Information exercises final judgment on the acceptability of all advertising, little space is given specifically to medical products or services.[15]

Malaysia, which began commercial radio broadcasting in 1962 and commercial television in 1965, controls advertising through the government's Ministry of Information and Broadcasting.[16] Radio Malaysia (which operates both radio and television) has the right "to sub-edit reasonably any advertising material without prior reference to the advertiser or his agent" to assure conformity with its code, a detailed set of instructions covering all phases of contractual arrangements and the production of commercials.[17]

The Advertising Council of the Minister of Culture, Recreation and Social Work supervises broadcast advertising

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[12] Cyprus Broadcasting Corporation, *Code of Advertising Standards for Radio and Television* (June 29, 1967).

[13] *See* Telefis Eireann, *Code of Standards for Television Advertising.*

[14] Letter from J.R. Kangwana, for the Director of Broadcasting, Voice of Kenya, to Jon T. Powell, February 19, 1970.

[15] Kuwait Ministry of Guidance and Information, *Rules and Principles for Acceptance of TV Advertisements* (1970).

[16] Radio Malaysia, *Talivishen Malaysia* (1969).

[17] Radio Malaysia, *Copy Code* 8 (September 1, 1966).

in The Netherlands. The *Broadcasting Act of May, 1969* gave exclusive regulatory responsibility for radio and television advertising to the Foundation for Broadcast Advertising (Stitchting Ether Reclame-STER), which has a governing board consisting of representatives from industry, business, and the press. STER has charge of approving, preparing and scheduling commercials. In carrying out its mission, STER is responsible to the Advertising Council, whose task it is to supervise the implementation of regulations for broadcast advertising. Actual operational supervision is entrusted first to STER, and "in exercising this supervision STER shall confine itself to refusing those advertisements submitted to it which are prima facie contrary to public order and morals or to the Regulations for Dutch Radio and Television Advertising drawn up by the Advertising Council," although appeal from STER decisions is possible through an Advisory Board appointed by the Advertising Council.[18]

Under the terms of the *Broadcasting Authority Act of 1968*, the New Zealand Broadcasting Authority determines the principles and regulations which the New Zealand Broadcasting Corporation (NZBC) must follow in accepting advertising. In addition to developing principles of advertising acceptability, NZBC is also bound by various acts having direct application to radio and television advertising, such as the Medical Advertisements Act (1942), Stock Remedies Act of 1934 and the Food and Drug Regulations of 1946.[19]

In Nigeria, a "Code of Principles and Standards of Conduct and Practice" governs the operation of Nigerian broadcasting. This ensures the Nigerian Broadcasting Corporation's adherence to specific as well as general instructions.

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[18] The Advertising Council, *Radio and Television Advertising Regulations 1970* 9 (1970). *See also*, "Television and Radio Advertising in the Netherlands (1970)," *Broadcasting in the Netherlands* 3 (January, 1970).

[19] *See* New Zealand Broadcasting Corporation, *Advertising: Conditions and Standards.*

The company, however, determines the acceptability of advertising matter.[20]

In Singapore, any aspect of medical advertising not covered by the Program Code is subject to final rule by a government agency:

> In the interpretation of this Program Code or any part of it, or in any operation or matter not specifically covered by this Code, the decision of the Head of Broadcasting Division, Ministry of Culture, shall be final and binding. The signing of any contract for the use of air time shall be deemed to constitute acceptance of this condition by the parties to such contract and their agents.[21]

The full circle is reached with the Trinidad and Tobago Television Company, which has adopted the recommendations of the Advertising Advisory Committee of Great Britain's ITA. However, this island service notes that there may be special local conditions and laws which must be considered also.[22]

Although the regulatory structures to control medical advertising thus vary widely, they generally tend to emphasize a statutory or official status. Their regulatory efficacy may be judged by the specificity of their regulations. The remainder of this study explores those regulations, beginning with the matters of defining acceptable margins of truth in medical advertising.

Margins of Truth

The regulation of truth in broadcast advertising may be described as the effort to avoid presentational techniques, statements, or language designed to create a false or mis-

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[20] *See* Broadcasting Company of Northern Nigeria Ltd., *Code of Principles and Standards of Conduct and Practice for Broadcasting in Nothern Nigeria.*

[21] State of Singapore Ministry of Culture, Broadcasting Division, *Programme Code* at 2.

[22] *See* Trinidad and Tobago Television Company, Ltd., *Principles of Television Advertising.*

leading impression about the efficacy or acceptability of a medical product or treatment. The basic issues of such regulation arise from the effort to achieve a balance between the rightful persuasive message of the advertiser and the unacceptable omission or distortion which could endanger a reasonable but not necessarily informed public.

Great Britain's *1954 Television Act* grants to the Independent Television Authority the power to exclude from television any advertisement that could reasonably be said to be misleading. In dealing with the advertising of medicines and treatments, the ITA follows *The Independent Television Code of Advertising Standards and Practice*, which specifically identifies questionable promotional or advertising techniques. For example, under the heading, "Avoidance of Impression of Professional Advice," the Code provides:

> In advertisements for medicine, treatments and products which are claimed to promote health or be beneficial in illness, the following are not allowable:
>
> a. visual presentation of doctors, dentists, pharmaceutical chemists, nurses, midwives, etc., which give the impression of professional advice or recommendation, and
>
> b. statements giving the impression of professional advice or recommendation made by persons who appear in the advertisements and who are presented, either directly or by implication, as being qualified to give such advice or recommendation.
>
> To avoid misunderstanding about the status of the presenter of a medicine or treatment, it may be necessary to establish positively in the course of the advertisement that the presenter is not a professionally qualified adviser.[23]

[23] Independent Television Authority, *ITV 1971: Guide to Independent Television* 125 (January, 1971).

The truthfulness of evidence supporting the value of a medicine is also subject to stringent regulation. Commercials are not allowed to contain any reference "to a hospital test unless the Medical Committee of the hospital is prepared to vouch for its validity."[24] Further, the Code requires that any medical statement or other tests contained in advertisements must be substantiated by authoritative evidence.

In the section of the Australian Broadcasting Control Board's *Television Program Standards* dealing with medical advertising, truth is explicitly required:

> No matter shall be included which in any way departs from truth as to the composition, character, or action of a product or method of treatment or its suitability for the purposes of which it is recommended. No untruthful implications should be imparted into any advertising matter . . . .
>
> Any implication that a product or method of treatment is used or recommended generally by doctors, dentists or hospitals will not be allowed . . .
>
> No manufacturer or distributor of proprietary medicines should without authority use any title, description or address which may lead persons to believe that the product recommended emanates from any hospital or official source, or is otherwise than a proprietary medicine advertised by a particular manufacturer for the purpose specified . . .[25]

The Cyprus *Code of Advertising Standards for Radio and Television* contains a number of references to truth, and indeed begins with a preamble stating that all broadcast advertising should be "truthful." It goes on to provide:

> No advertisement, taken as a whole or in part, shall contain any spoken or visual presentation of the

[24] *Id.*

[25] Commonwealth of Australia, *Television Programme Standards* 22-23 (1967).

product or service advertised, or statement of its price, which directly or by implication misleads.

In particular:

(a) *Special-Claims:* No advertisement shall contain any reference which is likely to lead the public to assume that the product advertised, or an ingredient, has some special quality or property which is in fact unknown, unrecognized or untraceable.[26]

The Television Authority of Hong Kong provides a series of ten explicit regulations bearing directly on truth as a standard of advertising. Regulations particularly germane to medical advertising include the restriction that testimonials by a medical doctor are prohibited, as are "any implications that a product or method of treatment is used or recommended generally by doctors, dentists, or hospitals . . ."[27] Furthermore, no manufacturer or distributor . . . "should use any title, description or address which may lead persons to believe that the product recommended emanates from any hospital or official source."[28] Also applicable are the restrictions on generalizing: advertising may not include

(a) General statements not properly qualified;
(b) Statements directly stating or implying that "all" of a certain group of diseases will be cured by the preparation;
(c) Statements directly stating or implying that "all" diseases are due to a particular cause. For example–
    (a) "All skin rashes and blotches are the direct result of improper eating of foods and the improper combination of foods."
    (b) "If your body has the right food, and

[26] Cyprus Broadcasting Corporation, *Code of Advertising Standards for Radio and Television* 1 (June 29, 1967).

[27] Hong Kong Television Authority, *Television Advertising Standards Code of Practice 2* at 5.

[28] *Id.*

> digests that food properly, then you will be perfectly healthy."[29]

In its *Code of Standards for Television Advertising* under the general heading "False or Misleading Advertising," Irish Television rules that "No advertisement shall contain any element of spoken or visual presentation which is calculated to mislead the viewer, either directly or by implication, with regard to the merits of the product or service advertised."[30] In the section governing medical advertising, the statement is made that "[T]he fact that serious harm may result to the individual from exaggerated, misleading or unwarranted claims necessitates the maintenance of a very strict standard in relation to the advertising of medicines and treatments, particularly on television."[31] In consequence, the Code prohibits advertisements of products in such manner as to mislead the public as to an asserted unknown or special nature thereof, nor does it allow any form of imitation which might mislead the audience. Finally, the Irish Code rules that no medical claim "should contain any matter which directly or by implication [might] mislead or depart from the truth as to the composition, character or action of the medicine or treatment advertised or as to its suitability for the purpose for which it is recommended." No illustration alone or in combination with words should be allowed if it "is likely to convey a misleading impression."[32]

The Netherlands Code discusses the regulation of truth in medical advertising under the heading "No quasi-scientific treatment:"

> In commercial broadcasts, scientific terminology, statistics and quotations must be used with great circumspection, so as to avoid confusion of ideas.

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[29] *Id.*
[30] Telefis Eireann, *Code of Standards for Television Advertising* at 4.
[31] *Id.* at 8.
[32] *Id.* at 8-9.

> In commercial broadcasts it shall not be permissible to use jargon, description, pictures or images which are obviously designed to suggest in a quasi-scientific or misleading way the existence in goods or services of qualities they do not possess.
>
> If statistics with limited validity are used, this limitation shall be clearly expressed.
>
> It shall not be permissible to refer in commercial broadcasts to tests, opinions and assessments of products published by consumer organizations engaged in comparative product testing. This prohibition shall not apply to researches commissioned by or on behalf of the advertiser.
>
> Advertisers, or their advertising agencies, shall, at the request of, and to the satisfaction of, the Advertising Council prove the correctness of the descriptions, quotations, pictures and/or images used in a commercial broadcast if these are challenged.[33]

New Zealand also provides specific restraints on deception in medical advertising. Under the *Food and Drugs Act (1947)*, "no advertisement shall directly or by implication . . . deceive a purchaser with respect to the properties of a . . . . drug."[34] The *Medical Advertisements Regulations (1943)* rule that no medical advertising shall directly or by implication:

> . . . Claim that a product is used or recommended by medical practitioners, dentists, chemists, nurses or masseurs, or by persons described as "doctors", "scientists", "professors" or other titles implying expert knowledge, except in the case of a named

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[33] The Advertising Council, *Radio and Television Advertising Regulations 1970* 3 (1970).

[34] New Zealand Broadcasting Corporation, *Requirements for Advertising Material* at 6.

> individual who is or was a medical practitioner registered in some part of Her Majesty's dominions;
>
> . . . claim that a product is a universal panacea or is infallible in its action;
>
> . . . make a statement that is false;
>
> . . . make a claim that is not based on an honest belief held on reasonable ground by the advertiser;
>
> . . . make a claim or statement that is likely to mislead or deceive.[35]

Truth, as a condition of acceptable advertising, is included in the Malaysian Code with the statement that no advertising material will be accepted if it "contains exaggerated or superlative claims or misleading statements." Like the Singapore Code, the Malaysian regulation further refines its ruling:

> No advertising shall contain any matter which in any way departs from truth as to the character of the product or its suitability for the purpose for which it is recommended. Further, no untruthful implications may be imported into any advertising matter.[36]

Kenya simply requires advertisements to refrain from any suggestion, implied or otherwise, that medicines can cure, "whether such medicines are produced by trained pharmacists, or traditional herbal doctors."[37] In describing unacceptable commercial material Kuwait forbids:

> Anything which contradicts with entire frankness. Concealing of certain facts which, had they been disclosed to the public, make the public abstain from buying the product advertised, shall be con-

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[35] *Id.* at 8.

[36] Radio Malaysia, *Copy Code* 9 (September 1, 1966).

[37] Letter from J.R. Kangwana, for the Director of Broadcasting, Voice of Kenya, to Jon T. Powell, February 19, 1970.

sidered as contrary to the principle of truth and honesty of advertisement.

Deceiving or misleading or exaggerated advertisements.

The information, drawings, forms or photographs which confuse and mislead the consumers about products or services other than those advertised.

Any description which, directly or by implication, indicates to another advertiser or compares, directly or by implication, between these products and services and those of other advertisers. In other words, and to be more strict, the advertising standards concerning the advertisement shall be observed.[38]

In most instances, the regulations go much further than dealing with truth in general or abstract form. Beyond statements emphasizing the necessity for adherence to reality, an insistence upon openness and avoidance of deceit, the codes identify specific areas whose content requires careful control. One concern is the testimonial.

Testimonial Restrictions

The regulations governing the character and use of the testimonial vary widely. Some broadcasting authorities such as those in Hong Kong, Finland and New Zealand, generally forbid such statements: "testimonials by any medical doctor will not be permitted;"[39] "any implication that a product or method of treatment is used or recommended generally by doctors, dentists, or hospitals will not be allowed;"[40] or "there should be no reference to any paid

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[38] Kuwait Ministry of Guidance and Information, *Rules and Principles for Acceptance of TV Advertisements* 7 (1970).

[39] Hong Kong Television Authority, *Television Advertising Standards Code of Practice 2* at 5.

[40] *Id.*

testimonial."[41] Finland's regulations on the subject provide that "[I]t is forbidden for a medically trained person to participate in the advertising of a product or service, or for a person advertising a product or service to be represented as medically trained."[42]

A medical doctor, when permitted in a testimonial, must be a licensed practitioner and his testimony direct, with no content in the commercial implying any general medical approval. In such instances, the regulations governing the testimonial may be extremely detailed.[43]

When testimonials are permitted by persons other than medical doctors, care is taken to assure their authenticity. This practice is followed in The Netherlands:

> The mentioning or quoting of testimonials, attestations or certificates in commercial broadcasts must be true and correct as regards the person who issued the relevant certificate. It shall not be permissible to use testimonials, etc., which are more than three years old, or which were given by people meanwhile deceased. The use of testimonials, etc., shall be prohibited if an essential and

[41] New Zealand Broadcasting Corporation, *Advertising: Conditions and Standards* at 30.

[42] Oy Mainos-TV-Reklam AB, *Principles for TV Advertising in Finland* 4 (1969).

[43] An example of such detailed restrictions is to be found in the regulations of the Australian Broadcasting Control Board, which provide in part: "When any testimonial is used, it must have been honestly obtained and must be limited to the actual views of the used. No testimonial should be used which has been paid for .... No testimonial given by a foreign doctor should be in any way used so as to imply that the doctor is a British doctor .... No testimonial given by a person holding the title of 'doctor', who is not a doctor of medicine, should be used without a definite statement of the profession or cult in which this person holds title .... Any reference to a published statement will be disallowed if the passage has been removed from its context so that its original sense is distorted, or so that it is applied to support the advertiser's interests in a manner not contemplated by the original author .... Any implication that a product or method of treatment is used or recommended generally by doctors, dentists or hospitals will not be allowed." Commonwealth of Australia, *Television Programme Standards* at 22-23.

> relevant change has occurred in scientific views, in the technological situation or in the composition of the product since the time when the testimonial was given . . . .
>
> *Commentary*
> When the advertising film or tape is submited the Radio and Television Advertising Foundation (Stichting Ether Reclame "STER") must be informed in writing of the address of the person who gave the testimonial, etc. The actual testimonial must be made available to STER.[44]

The Canadian Broadcasting Corporation's commercial policy provides examples of acceptable and unacceptable testimonials, carefully distinguishing between a testimonial and an endorsement, a fine distinction not found elsewhere in this study. A testimonial is defined as:

> . . . a statement in support of an advertiser's goods or services that goes beyond a simple endorsement in content, tone and emphasis. The person delivering a testimonial in a commercial message usually makes a reference to the problem or difficulty he encountered before using the advertiser's product, and goes on to describe the improvement brought about by the use of the advertiser's product. In other words, he makes a claim for the effectiveness of the product.[45]

An endorsement, on the other hand, is defined as "a simple, concise statement of recommendation."[46] Testimonials may not be used in advertising medicinal products or health studios, while endorsements may be so used.

While there is no outright ban on the use of testimonials in medical advertising in Great Britain, advertisements

[44] The Advertising Council, *Radio and Television Advertising Regulations 1970* 3-4 (1970).

[45] Canadian Broadcasting Corporation, *General Advertising Policy on Medicinal Products* 2 (January, 1970).

[46] *Id.*

containing testimonials by unregistered practitioners must indicate that the doctor is in fact unregistered. Testimonials by persons "well known in public life, sport, entertainment, etc.," are prohibited. Further, any reference to college, hospital, clinic, institute, laboratory or any similar establishment must correspond to a bona fide establishment. Authenticity is required:

> There shall be no implication that the announcer is a doctor or dentist nor shall the background or set imply in any way that the announcement is being made from the professional rooms of a doctor or dentist or from a hospital.[47]

The major theme underlying the regulations is the concern that the testimonial be what it is supposed to be—an indentifiable, accurate, and authentic expression of opinion. In general, the regulations of those nations permitting the use of testimonials were strict in order to assure that the opinion presented as coming from a medical authority was just that and nothing more; that the opinion expressed was not paid for; and that there existed documentary evidence to substantiate the claims made.

The official exercise of control over truth and testimony in medical advertising has another facet. Since the use of language is so clearly related to the veracity of the persuasive message, the codes also included references to terminology, both unacceptable and acceptable.

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[47] Independent Television Authority, "Advertising Control," *ITV 1971: Guide to Independent Television* 126 (January, 1971). Lord Aylestone gives this description of the ITA's concerns: "Amongst its [ITA's medical advertising regulations'] many provisions is a ban on the use of doctors or people acting the part of doctors to present claims for medicines. That is why, when you see in a medical advertisement a dignified 'presenter' who looks more like a doctor than any doctors you have ever met, you will find him clearly labelled as a 'Sales Manager' or 'Marketing Executive.' If you think he is a doctor after that, then there is nothing much we can do for you." Lord Aylestone, "Television through Advertising," *ITA Notes 18* 5 (April, 1970).

Unacceptable Terminology

A number of the nations' medical advertising codes identified specific words and phrases, some of which were prohibited while others were described as acceptable under certain specified conditions. In Great Britain, the ITA concerns itself with both categories. An outright ban exists on such terms as "tonic" which "is not acceptable for medicines or treatments or products for which medical or health claims are made." A like ban exists for copy which is exaggerated by the improper use of words such as "magic", "magical", "miracle", "miraculous".[48]

Other nations are similarly concerned. Australia (like Hong Kong) has specific regulations banning the use of any superlatives such as "the best," "the most successful," "superb," "quickest," and those statements which imply without qualification that all diseases of a certain type will be cured or that all diseases of a particular group have a particular cause. To avoid misunderstanding, other words, such as "vitality," which could have interpretations not intended by the advertiser, are banned. Beyond the concern for avoiding the injudicious use of superlatives, however, care is taken to avoid permitting advertising to include any implication whatsoever that non-prescriptive medicines cure or have special curing power.[49] The Australian code also bans descriptive variations which imply a reason for the reliability or efficacy of a medicine:

> One particular form of advertising should not be used. This form attempts to convey the impression

[48] Independent Television Authority, "Advertising Control," *ITV 1971: Guide to Independent Television* 125 (January, 1971). Use of the term "tonic" was banned by most nations.

[49] *See* Commonwealth of Australia, *Television Programme Standards* at 26-27, for examples of expressions which should not appear in broadcast advertising: "the only preparation which will achieve a certain result; a 'certain' or 'unfailing' remedy for any particular purpose; nature's own remedy; Australia's national remedy; one dose will immediately; never fails; you can always depend on; used by more persons than any other preparation of its kind; there's nothing better than. . ."

> that the preparation is a secret held by the manufacturers as the result of years of devoted and persistent research on the part of eminent scientists who are at last able to present the nation with wonderful results.
>
> An alternative method of conveying the same ideas and equally to be avoided is that the formula is one that is "centuries old", "was known to the ancients", and it is occasionally suggested that it has been lost for centuries and only just now rediscovered.[50]

Malta and Cyprus, as well as the other nations, are careful to consider the possible misuse of scientific language which could lead the non-technical public to draw invalid conclusions:

> Statistics, scientific terms, quotations from technical literature and the like must be used with a proper sense of responsibility to the ordinary listener. The irrelevant use of data and jargon must never be resorted to in order to make claims appear more scientific than they really are. Statistics of limited validity should not be presented in such a way as to make it appear that they are universally true.[51]

Ireland, like England, forbids the use of such terms as "magical" or "miracle" on the grounds of improper exaggeration. Other terms which are banned for Irish television include those used in claims for products for women which could be described to imply effectiveness in inducing mis-

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[50] *Id.*

[51] Malta Broadcasting Authority, *Annual Report and Accounts 1967-68* 48 (1968).

carriages.[52] Further, "[N]o advertisement should claim or suggest, containing to the fact, that the article advertised is in the form in which it occurs in nature or that its value lies in its being a 'natural' product."[53]

In many nations, use of the word "cure" has been strictly limited. Great Britain bars the use of this or any similar term—"Advertisements should not contain any claim (directly or by implication) to extirpate any ailment, illness, disease or symptom of ill-health"[54]—as does Ireland. Cyprus has a similar regulation which prohibits advertisements from containing

> . . . a claim to cure any ailment or symptoms of ill-health, nor should an advertisement contain a word or expression used in such a form or context as to mean in the positive sense the extirpation of any ailment illness or disease.[55]

On the other hand, the Australian code indicates that there may be permissible use of this term: "The word 'cure' or any visual implication that the proprietary medicine will definitely cure the condition prescribed, will very rarely be justified. The use of this word and such pictorial matter will be critically examined."[56]

Hong Kong regulations offer more extensive qualifications for the use of the word "cure." After first presenting

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[52] Similarly, a regulation entitled "Sexual Weakness, Premature Ageing, Loss of Virility" provides: "No advertisement should claim that one product, medicine or treatment advertised will promote sexual virility, or be effective in treating sexual weakness, or habits associated with sexual excess or indulgence, or any ailment, illness, or disease associated with those habits. In particular, such terms as 'premature ageing', 'loss of virility' will be regarded as conditions for which medicines, products, appliances or treatments may not be advertised." Telefis Eireann, *Code of Standards for Television Advertising* at 10.

[53] *Id.*

[54] Independent Television Authority, "Advertising Control," *ITV 1971: Guide to Independent Television* 126 (January, 1971).

[55] Cyprus Broadcasting Corporation, *Code of Advertising Standards for Radio and Television* 6 (June 29, 1967).

[56] Commonwealth of Australia, *Television Programme Standards* at 26.

the same conditions and wording to be found in the Australian regulation, the Hong Kong code continues to the effect that "[N]o person should issue any advertisement claiming to cure chronic or incurable ailments or for use in conditions in which self-medication presents a risk."[57] The Hong Kong regulations also provide further restraints on the use of "cure" in connection with specific diseases or conditions, such as cancer, genito-urinary diseases, tuberculosis, leprosy, diabetes, polio, diptheria, heart disease, tetanus, smallpox, pleurisy, scarlet fever, blindness, and the prevention or cure of structural or organic ailments of the auditory system.

While Radio Malaysia issues regulations similar to Great Britain as well as Hong Kong, other positive qualifications are added. A cure may be claimed or implied for "such common ailments as colds, headaches, toothache, neuralgia and corns" or any other ailment which is not listed in the extensive regulations. Moreover,

> advertisements may claim to alleviate or relieve but not cure such ailments as the following: asthma, baldness, bladder weakness, catarrh, gastric or duodenal stomach ulcers, indigestion, piles, rheumatism, malaria and psoriasis.[58]

Another term subject to differing regulatory treatment is "guarantee." In some regulations the term is simply forbidden, while in others it is subject to qualification. The simple ruling that "an advertisement should not contain any guarantee of 'money back'" is found in Hong Kong, Australia, and elsewhere. Regulations which do permit restricted use of "guarantee" provide conditions designed to assure public understanding of the real significance of the term. A typical regulation reads:

> The word "guarantee" should be used with caution and sparingly and only in relation to some specific

[57] Hong Kong Television Authority, *Television Advertising Standards Code of Practice 2* at 7.

[58] Radio Malaysia, *Copy Code* 9 (September 1, 1966).

> description or quality and the detailed terms of any such guarantee must be available for inspection. Where the guarantee is associated with an offer to return the purchase price, it must be made quite clear to what it applies and in what way it protects the purchaser.[59]

Beyond unacceptable words and phrases, or their limited permissible usage, there exists another area of regulatory control peculiar to medical advertising. Restraints are specifically imposed on medical commercials to avoid any appeal to fear.

Appeal to Fear

The appeal to fear, based upon the willingness of an audience to indulge in self-diagnosis, is subject to clear and precisely worded regulations in the codes which were the subjects of this investigation. The ITV Code illustrates the specifictiy of this concern. Under the heading, "Appeals to Fear," the Code states that "[A]dvertisements should not contain any statement or illustration likely to induce fear on the part of the reader or viewer that he is suffering, or may without treatment suffer, or suffer more severely, from an ailment, illness or disease."[60] The Irish Code has almost identical wording.[61]

The Australian Broadcasting Control Board has a slightly more detailed regulation:

> No spoken or pictorial representation may be used which dramatizes distress or morbid situations involving ailments or sickness or which conveys the suggestion that harmful consequences may result from the medicine not being used. No spoken or pictorial representation of vivisection will be allowed.

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[59] Malta Broadcasting Authority, *Annual Report and Accounts 1967-68* 48 (1968).

[60] Independent Television Authority, "Advertising Control," *ITV 1971: Guide to Independent Television* 126 (January, 1971).

[61] *See* Telefis Eireann, *Code of Standards for Television Advertising* at 8.

> No advertisement should contain any matter which would lead persons to believe from the symptoms described that they are suffering from any serious ailment.[62]

The Cyprus Broadcasting Corporation provides in a simple but broader regulation that "[A]dvertisements must not without justifiable reasons play on fear,"[63] and The Netherlands' code rules that "[I]f no justifiable reasons can be given, an advertising broadcast should not appeal to feelings of fear and superstition."[64]

Malaysia's "General Principles" governing commercials include the statement that advertising will not be accepted if it "leads listeners to conclude that they are suffering from a particular ailment."[65]

The New Zealand code bans any medical commercial which directly or by implication suggests "that serious consequences may arise from a minor or trivial complaint."[66] Northern Nigeria also forbids advertising which is "so worded as to persuade persons that they are suffering from any serious ailment."[67]

The regulations to assure truthfulness in medical advertising are matched by those concerned with promoting good taste and avoiding public offense. These constitute the subject of the next section.

Matters of Taste

Although a number of the regulations described in this

[62] Commonwealth of Australia, *Television Programme Standards* at 23. Hong Kong likewise has a detailed regulation, *see* Hong Kong Television Authority, *Television Advertising Standards Code of Practice 2* at 6.

[63] Cyprus Broadcasting Corporation, *Code of Advertising Standards for Radio and Television* 3 (June 29, 1967).

[64] The Advertising Council, *Radio and Television Advertising Regulations 1970* 1 (1970).

[65] Radio Malaysia, *Copy Code* 1 (September 1, 1966).

[66] New Zealand Broadcasting Corporation, *Requirements for Advertising Material* at 8.

[67] Broadcasting Company of Northern Nigeria Ltd., *Code of Principles and Standards of Conduct and Practice for Broadcasting in Northern Nigeria* at 3.

study could fall under the heading of "taste"–depending upon the reader–it should be noted that many of the codes specifically emphasize the necessity of tasteful restraint. Still, taste presents a most elusive aspect of medical advertising.

Section 10 of *The Independent Television Code of Advertising* includes the regulation that "[N]o advertisement should offend against good taste or decency or be offensive to public feeling." An appendix to the Code includes those products and services which could be considered offensive as well as misleading or dangerous for the public. The advertising of bust developers, products and treatments to promote sexual virility or to treat sexual weakness or habits associated with sexual excess or indulgence are not permissible.

In Australia, the commercial television stations are advised by their Television Advertising Board to apply standards of taste in personal product advertising, following the principles established by the Australian Broadcasting Control Board. It is required that great discretion be applied in accepting and presenting ads for personal products which may be considered unsuitable for inclusion in programs which may be viewed in the family circle. The Television Advertising Board also notes that certain "commonsense guideposts," actually suggested by the United States' National Association of Broadcasters, have relevance.[68]

Under the provisions of the *Broadcasting and Television Act 1942-1967*, the Australian Broadcasting Control Board has promulgated regulations specifically concerned with the limits of acceptable taste.[69] One aspect of medical advertising regulation is unique to Australia–Sunday advertising is considered a matter of special importance:

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[68] *See* Federation of Australian Commercial Stations, "Medical Advertising," *Television Advertising Board Advertising Regulations* at 11-12.

[69] *See* Commonwealth of Australia, *Television Programme Standards* at 23. Identical provisions are contained in Hong Kong Television Authority, *Television Advertising Standards Code of Practice 2* at 7.

> Advertisements which are televised on Sunday should be presented in good taste and with discretion. Repetition and sensational presentation should be avoided, especially in statements relating to prices. Advertisements which may be appropriate for presentation on weekdays are not necessarily suitable for Sunday transmission. Advertising matter relating to medical and toilet preparations should be kept strictly within the bounds of good taste.[70]

The regulatory philosphy in Canada, where commercials for contraceptives are now being aired subject to "stringent regulations regarding taste and accuracy," somewhat parallels that of Great Britain's ITA. The Canadian Broadcasting Corporation states that it applies general standards of good taste in the field of medical advertising. Cyprus simply rules that all broadcast advertising must be "of good taste," while Finland adds the interesting qualification that ". . . the advertisements must not be of a type which would arouse negative attitudes towards television advertising."[71] The Irish Television code emphasizes that:

> The advertising of intimately personal products which are generally regarded as unsuitable conversation topics in mixed social groups is not acceptable. Such advertising of personal products as is permitted must be presented with special emphasis on generally accepted standards of ethics and good taste.[72]

Kuwait's code expressly forbids airing any commercial which would "cause offense to the public feeling insofar as the religious matters or social traditions are concerned or does not confirm (sic) with the public taste or offends the

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[70] Commonwealth of Australia, *Television Programme Standards* at 18.

[71] Oy Mainos-TV-Reklam AB, *Principles for TV Advertising in Finland* 3 (1969).

[72] Telefis Eireann, *Code of Standards for Television Advertising* at 5.

feelings of the public." Also forbidden is advertising which would "cause psychological harm to the public such as arising the hopes at the beginning of the reading or listening to the advertisement message and finally feels frustrated (sic)."[73] The "General Principles" of the Radio Malaysia *Copy Code*, have a number of instructions specifically related to taste, including particular prohibitions on advertising techniques. Similarly, the "General Principles" of the New Zealand Broadcasting Corporation ban commercial material which "is likely to offend the religious, political, racial or sentimental susceptibilities of a substantial and responsible section of the community," or "is likely to provoke or annoy the audience."[74] Article 1 of the Netherlands' *Radio and Television Advertising Regulations 1970*, states that "an advertising broadcast shall not be contrary to . . . public order or to morals, nor shall it conflict with . . . generally accepted standards of decency or good taste. Neither its content nor its form shall be offensive. . . ."

Singapore's *Programme Code*, under the general heading "Unacceptable Accounts," precludes advertisement of personal hygiene products such as deodorants, depilatories, mouth washes and antiseptics when they would be advertised specifically to treat unpleasant breath or body odor. The qualifying statement which makes permissible the advertising of these products states that, "[A]dvertisement of products which are designed to perform these functions may be accepted if the copy avoids mention of such functions."[75]

The codes under study also list many medical products and services which are banned. Whether they are banned for

[73] Kuwait Ministry of Guidance and Information, *Rules and Principles for Acceptance of TV Advertisements* 6 (1970).

[74] New Zealand Broadcasting Corporation, *Requirements for Advertising Material* at 2. The preamble thereto provides: "Radio and television advertising is presented to the whole family in its own home. Both advertisers and broadcasters therefore share a particular responsibility to insure that it is always lawful, honest, decent and fair."

[75] State of Singapore Ministry of Culture, Broadcasting Division, *Programme Code* at 8.

purposes of public safety or taste is a matter of interpretation.

Prohibited Advertising

Most of the nations in this study provided a list of medical products and services which could not be advertised by broadcasters. Those products and services deemed unacceptable by Great Britain's Independent Television Authority, for example, include contraceptives, smoking cures, products for the treatment of alcoholism, contact or corneal lenses, clinics for the treatment of hair and scalp, and products for the treatment of hemorrhoids. Exceptions to the ban on contraceptives are granted in the cases of official or officially sponsored "Family Planning Services." Other products and services explicitly banned include preparations and devices purporting to enlarge the bust, induce miscarriage, promote sexual virility, diagnose or treat illness by hypnosis, or offer relief of backache and rheumatic pains based upon urinary antiseptic properties. There is also a listing of those diseases for which medical advertising is banned, with a few exceptions for limited treatment. A similar listing is provided by the Australian Broadcast Control Board.

Slight variations in the listing of banned products and advertising indicate the prevalence or the potential threat of local diseases as well as differing customs. For example, although Barbados has a listing much like the ITV Code (though not as detailed or extensive), advertising is banned when purporting to treat such illnesses as appendicitis, blood poisoning, diptheria, disorders of menstrual flow, epilepsy, gangrene, pneumonia, pleurisy, poliomyetitis, scarlet fever, smallpox, meningitis and tetanus.[76]

The regulations of the Canadian Radio Television Commission and the requirements of the National Health Department list as unacceptable for advertising: ". . . laxa-

[76] Letter from F.G. Duesbury, General Manager of Barbados Rediffusion Service, Ltd., Bridgetown, Barbados, to Jon T. Powell, February 6, 1970.

tives, cathartics and diuretics including foods and beverages when advertised as such; sleeping tablets . . . personal hygiene products, corn removers (unacceptable in TV), steam baths and massage parlors. . ."[77]

The Hong Kong Television Authority, while having restrictions similar to those in the ITV Code, adds a ban on alcohol advertised as a medicine. Kenya has no written regulations for commercial advertising, but as a matter of practice refuses to advertise any birth control drugs. Kuwait forbids the advertising of cures for alcoholism and smoking unless prior approval is given by the Ministry of Public Health. A similar regulation exists in Southern Yemen.

The Netherlands *Radio and Television Advertising Regulations 1970* makes the general statement that "expert preventive censorship" will be exercised over:

1. medicinal drugs which also comprise all remedies–inclusive foods–whose use is publicly recommended for treating, alleviating or preventing any affection, illness, symptoms, pain, injury or defect;
2. methods of treatment including all actions of a medical or dental nature, even if such actions cannot be considered to be a specific method of treatment;
3. other products or services, insofar as they are presented as medicinal drugs or methods of treatment, or as substitutes for medicinal drugs or methods of treatment.
4. Remdies, inclusive foods, recommended for use of diets.[78]

Almost all the nations in this study are specific in banning any commercial which by method of presentation

[77] Canadian Broadcasting Corporation, *General Advertising Policy on Medicinal Products* 1 (January, 1970).

[78] The Advertising Council, *Radio and Television Advertising Regulations 1970* 6 (1970).

or wording would imply that the advertised product is a substitute for proper medical attention. The typical regulation states: "[N]o advertisement should contain an offer of a medicine or product for, or advice relating to the treatment of, serious diseases, complaints, conditions or symptoms which should rightly receive the attention of a registered medical practitioner."[79] Banned also are those "presentations and statements which give the impression of professional advice or recommendation."[80] Further, most of the codes include a specific directive barring diagnosis by correspondence:

> No advertisements should offer to diagnose by correspondence diseases, conditions or any symptoms of ill-health in a human being or request from any person a statement of his or any other person's symptoms of ill-health with a view to advising as to or providing for treatment of such conditions of ill-health by correspondence. Nor should any advertisement offer to treat by correspondence any ailment in a human being.[81]

The one variation to this regulation was the allowance of generalized advice by a qualified medical practitioner.[82]

Hypnosis also constitutes an unacceptable topic for medical advertising. Where hypnosis is referred to, the regulations are direct and similarly worded: "No advertisement should contain any offer to diagnose or treat complaints or conditions by hypnosis."[83] Medical advertisers

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[79] Independent Television Authority, "Advertising Control," *ITV 1971: Guide to Independent Television* 126 (January, 1971).

[80] Cyprus Broadcasting Corporation, *Code of Advertising Standards for Radio and Television* 6 (June 29, 1967).

[81] Trinidad and Tobago Television Company, Ltd., *Principles of Television Advertising* at 5.

[82] *See* State of Singapore Ministry of Culture, Broadcasting Division, *Programme Code* at 6: "This shall not exclude the type of program in which a duly qualified, but anonymous, medical practitioner answers anonymously, medical questions of a general nature submitted by the listener."

[83] Telefis Eireann, *Code of Standards for Television Advertising* at 10.

are also expressly forbidden to make disparaging remarks either about their competitors or the medical profession. Typically, the regulation reads: "No advertisement should directly or by implication, disparage the products, medicines or treatments of another advertiser or manufacturer, or registered medical practitioners or the medical profession."[84]

Conclusion

The restraints imposed on medical advertising in this study reflect a world-wide concern for protecting the public in a sensitive area where the problems of ignorance and misinformation are magnified by false hope. These broadcast codes have been designed to avoid promotion of those medical products and services which are considered detrimental to public health, could keep the public from seeking necessary medical assistance, or convey the false impression of cure or adequate treatment.

In some instances, a ban also exists on those medical products and services which are deemed offensive to social custom. Concern for the sanctity of sex and birth reflect such social obligations imposed on the broadcaster. The defining of the acceptable boundaries for the broadcaster in this area need not interfere with the basic freedom of expression. So long as the public is provided with information necessary to assure adequate judgment and avoid the tragic results of misinformed hope, the proper use of public airwaves for the advertising of medical products and services can be assured.

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[84] *Id.* at 9.